

IV. REMARKS

Claims 1-22 are pending in this application. By this amendment, claims 1, 6, 8, 10, 13, 14, 16 and 21 have been amended. Applicant does not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 6, 7, 10, 16 and 21 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Claims 1, 2, 8, 9, 13, 14 and 19 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Claims 1-22 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Spiegel (U.S. Patent No. 6,466,918), hereafter "Spiegel."

A. REJECTION OF CLAIMS 6, 7, 10, 16 AND 21 UNDER 35 U.S.C. §112, FIRST PARAGRAPH

The Office has rejected claims 6, 7, 10, 16 and 21 for allegedly failing to satisfy the written description requirement. Applicant has amended claim 6 to recite, "maintain a record of the frequency." Claim 7 depends from claim 6. Similarly, Applicant has amended claims 10, 16 and 21 to recite, "...records of frequencies." This amendment is supported, *inter alia*, by paragraph 28 of the specification, which recites "... frequency system 140 can *keep track of* the ten most frequently purchased items." Emphasis added. Applicant asserts that this amendment further satisfies the written description requirement. Accordingly, Applicant requests that the rejection be withdrawn.

B. REJECTION OF CLAIMS 1, 2, 8, 9, 13, 14 AND 19 UNDER 35 U.S.C. §112, SECOND PARAGRAPH

The Office has asserted that claims 1, 2, 8, 9, 13, 14 and 19 are indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Office rejects claims 1 and 8 as allegedly being incomplete for omitting essential steps and claims 14 and 19 as allegedly being incomplete for omitting essential elements. Applicant have amended claims 1, 8, 14 and 19 to include "...wherein the at least one high frequency item is an item that is frequently purchased." Applicant asserts that these amendments further clarify the invention.

The Office further rejects claims 1, 9, 13, 14 and 19, stating the it is indeterminable whether the term "automatically generating" refers to recalling a stored query or creating a new query. Office Action, page 3. The Office also states that the specification is not enabling for automatically creating a new query. Office Action, pages 3 and 4. Applicant respectfully traverses and submits that paragraph 0032 of the specification gives two specific examples of ways in which queries may be automatically generated. In the first, a data entry that includes one or more attributes of an item to be displayed is stored in a storage system and used to determine (i.e., create using the attributes) each of the queries used to locate the item. In the second, the data entry in the storage system includes each of the required queries that have previously been created. To this extent, the term "automatically generated" of the claimed invention is particularly pointed out and distinctly claimed as presently constituted. Accordingly, Applicant requests that the rejection be withdrawn.

The Office also rejects claims 2 and 8, stating that it is not determinable from the claims how the selection of the at least one high frequency item takes place. While Applicant

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acknowledges that limitations from the specification are not read into the claims, Applicant submits the claims should be read in light of the specification. Applicant submits the reading of the claims in light of the specification is especially critical when determining the meaning of terms and whether they particularly point out and distinctly claim the subject matter of the invention under a 35 U.S.C. §112, second paragraph, analysis. In the present case, the selection of the item may be performed, for example, by automatically making a determination as to which items are most often purchased (para. 0003), by referring to the operations performed by a user (para. 0033), and / or by an administrator (para. 0007). The fact that the selection may occur in more than one way does not mean that it is indeterminate, as the Office appears to imply.

Accordingly, Applicant respectfully requests that the rejection be withdrawn.

The Office also rejects claim 13 on the ground that there is allegedly insufficient antecedent basis for the limitation, the automatically generating step. Applicant has amended claim 13 to refer to claim 9 and to include the limitations of claim 11. Applicant asserts that this amendment further clarifies the invention. Accordingly, Applicant requests that the rejection be withdrawn.

C. REJECTION OF CLAIMS 1-22 UNDER 35 U.S.C. §102(b)

With regard to the 35 U.S.C. §102(b) rejection over Spiegel, Applicant asserts that Spiegel does not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 8, 14 and 19, Applicant submits that Spiegel fails to teach that each of the items in the hierarchical structure is located using a query for each level of the hierarchical structure. In contrast, in Spiegel "[t]he featured books and categories are displayed

as respective hyperlinks that provide *a direct path* to the corresponding books and categories.” Col. 7, lines 17-19, emphasis added. To this extent, the featured books and categories of Spiegel are not located using a query for each level, but rather by hyperlinks that provide a direct path. In contrast, the claimed invention includes “...each of the items is located using a query for each level of the hierarchical structure.” Claim 1. As such, the items of the claimed invention are not accessed via hyperlinks that provide a direct path as are the books and categories of Spiegel, but rather are located using a query for each level of the hierarchical structure. This distinction of query based location of the claimed invention from link-based systems such as that of Spiegel is clear from the specification. See, e.g., para. 0004. Thus, the location of items using a query as included in the claimed invention is not taught by the direct path hyperlinks of Spiegel. Accordingly, Applicant respectfully requests that the Office withdraw its rejection.

With further respect to independent claims 1, 8, 14 and 19, Applicant respectfully submits that Spiegel also fails to teach automatically generating the query for each level of the hierarchical structure. The portions of Spiegel cited by the Office teach automatically identifying the most “popular” nodes and calling them to the attention of users during navigation of the browse structure by elevating the nodes in the browse structure. Col. 1, line 60 through col. 2, line 4; col. 2, lines 26-36; col. 6, lines 5-20. However, nowhere in the portions cited by the Office or elsewhere does Spiegel teach that this is accomplished by automatically generating queries. Instead, as stated above, Spiegel teaches a direct link structure rather than a query based structure. The claimed invention, in contrast, includes “...automatically generating the query for each level of the hierarchical structure.” Claim 1. As such, unlike in Spiegel, in the claimed invention a query is automatically generated for each level of the hierarchical structure. This is

in contrast to the link-based structure of Spiegel. Accordingly, Applicant requests that the rejection be withdrawn.

With respect to claims 3, 4, 11 and 12, Applicant respectfully submits that Spiegel also fails to teach storing the operations performed by a user to select an item in the hierarchical structure and analyzing the stored operations. The Office asserts that "...it is inherent in the method of Spiegel that in order to display any selected item, the operations performed to select the item must be stored and analyzed." Office Action, page 6. Applicant submits that the Office's factual assertion is not properly based upon common knowledge and, as such, amounts to Official Notice. In particular, the Office's assertion of inherency presupposes that there is no other way to perform the method of Spiegel except by storing the operations performed by a user to select an item in the hierarchical structure and analyzing the stored operations. Applicant disagrees and asserts that factors other than operations performed by a user may yield an item for display by the method of Spiegel. For example, shipping records or accounting records could each be used by Spiegel to display an item. Neither of these is an operation performed by a user. To this extent, it is not inherent that Spiegel must store and / or analyze operations performed by the user. Accordingly, Applicant respectfully requests that the Office support the finding with references that show these features or withdraw the rejection.

With respect to dependent claims, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the claims depend. Furthermore, Applicant submits that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicant respectfully requests withdrawal of this rejection.

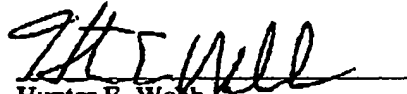
V. CONCLUSION

In addition to the above arguments, Applicant submits that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicant does not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicant does not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicant reserves the right to present such arguments in a later response should one be necessary.

In light of the above, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,

Date: February 16, 2006


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